IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 922 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

JASHVANTBHAI GOVINDBHAI GAJJAR

Appearance:

Mr. S.P. Dave, APP for Petitioner

MS BANNA S DUTTA for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 11/09/98

ORAL JUDGEMENT

Against the respondent chargesheet of the offence under Section 354, Indian Penal Code was filed pursuant to the complaint lodged in Gandhinagar police station, which came to be registered as Criminal Case No. 5091 of 1998. At the conclusion of the trial, the learned Judicial Magistrate (F.C.) at Gandhinagar delivering the judgment on 30th June 1990 acquitted the respondent. The present appeal is therefore filed by the State challenging the legality and validity of the order of

acquittal. In order to appreciate rival contentions, few facts may be stated.

2. Sushilaben Kalidas Meswania is serving as a daily wager (Sweeper) in Vidhan Sabha P & T Exchange Office, Gandhinagar. In the morning for two hours or so she had to go to the office and sweep & clean the same. On 28th May 1989 around 10.50 A.M. she had gone to the office. The respondent was serving as Technician in the office. The Muster Roll used to remain with him. Sushilaben had therefore to go to his table and mark her presence in the muster-roll. On that day when she went to the table of the respondent no one else was in the office. Taking the advantage of her loneliness, the respondent immediately hugged her and tried to outrage her modesty. With a view to save her and get rid of the clutches & sexual violent attack she slapped the respondent and succeeded in dodging herself. However she was again pulled back catching her by her shoulders. She however using the force made herself off the hook and went out of the office. Immediately after going out of the office she shouted for help. Some labourers working there, went to her and on being questioned she narrated her plight because of besetting act of respondent. She also informed M.S. Masatti, the peon of that office who had rushed there knowing about the incident. The respondent then apologized, but Sushilaben then thought that if the chapter was closed with the apology likewise incidents would be repeated in future. She therefore thought it fit to go to the police station and lodge the complaint. She went to the Gandhinagar police station and lodged the complaint against the respondent for the offence punishable under Section 354 of Criminal Procedure Code alleging that by assaulting or using criminal force the respondent outraged her modesty etc.

3. At the conclusion of the investigation, the police officer filed the chargesheet against the respondent for the offence under Section 354 of Criminal Procedure Code in the Court of the learned Judicial Magistrate (F.C.), Gandhinagar, which came to be registered as Criminal Case No. 5091 of 1998. Undergoing necessary formalities a plea was taken to which the respondent pleaded not guilty. The prosecution therefore adduced necessary evidence. Appreciating the evidence before him, the learned Magistrate found that the prosecution failed to establish the charge levelled against the respondent. He, therefore, delivering the judgment on 30th June 1990 acquitted the respondent. It is against that acquittal order, the present appeal is preferred.

4. Mr. S.P. Dave, the learned APP has, assailing the order of acquittal, contended that the evidence on record is sufficient to convict the respondent. The evidence of Sushilaben, the victim alone is sufficient to hold that the charge levelled against the respondent is proved beyond reasonable doubt. However, erroneously appreciating the evidence & assigning illogical reasons, the learned Magistrate acquitted the respondent. This is therefore the fit case wherein interference of this court is necessary. He also submitted that such scourages and incidents of sexual violence in different forms on women are increasing, and so no lenient view should be taken in such cases.

5. On behalf of the respondent in reply it is contended that as per law the prosecution has failed to lead evidence and establish the charge. No doubt if such wrong is proved, the court must heavily come down upon the accused; but if the prosecution fails to prove the charge levelled against the accused, it cannot be allowed to lament on its own failure to prove the charge, and becoming sentimental or sympathetic, or obsessed with particular ideology the accused cannot be unjustly punished as making of false allegations about character assassination for oblique motive is not unknown.

6. To deal with the rival contentions aptly, I have carefully perused the evidence on record. There is no reason to hold that the learned Magistrate has fallen into error either in appreciating the evidence or drawing the conclusions against the prosecution. The appreciation of the evidence made is quite in consonance with the principles of law. I am in general agreement with his just reasonings. When that is the case, it is not necessary for me to restate all those reasonings. However, I would deal with few material points going to the root of the case on which submissions are made. In this case, the evidence of Sushilaben Kalidas (Ex.16), Ashaben Ramaji (Ex.19), Laxmiben Amraji (Ex.20) is material; rest of the evidence not throwing light on the proposition is not required to be considered. Apparently, reading the evidence of Sushilaben Kalidas the victim one would be inclined to agree with her case, but her testimony is not free from doubt. It appears to be fishy and therefore without any independent corroboration the learned Judge has rightly held that it would be unsafe and improper to place any reliance thereon. It may be stated that it was a day of 28th May 1988, and on that day being fourth Saturday of a month the office was closed. On closed Saturday no one goes to

the office. In case the arrears are to be cleared within time limit, or some urgent work is to be attended to, one or two clerks or at times some officer may go to the office on closed Saturday or Sunday, but in that case the Sweeper working as daily-wager is not as a matter of course called. When such is the ordinary practice it was incumbent upon the prosecution to bring it on record that though it was the non-working Saturday Sushilaben was directed to attend office for the purpose of sweeping and cleaning as few of the clerks were to attend the office. It was also necessary to prove that to attend some official work some clerks were either asked or directed to attend, or had gone there of their own accord. No such evidence is brought on record, and Mr. Dave the learned APP also though he laboured much, failed to find that evidence on record, and had to concede about the said fact. When asked, Sushilaben had made it clear in her evidence that on every holiday also as per the order in writing she received, she had to attend the office. Ordinarily this cannot be believed as on holidays even the daily wagers are not called or directed to attend office for sweeping or cleaning. If at all she was in peculiar circumstances ordered to attend passing the written order, the same ought to have been produced. When that order is not produced and no good reason is also assigned, prudence dictates, that the evidence of Sushilaben in such facts and circumstances, cannot be accepted and relied upon without any independent corroboration. It should also be borne in mind that on holiday or non-working Saturdays, one or two members of the staff attending office are not required to mark presence in muster-roll. The say of Sushilaben that she had gone to the table of accused for marking presence is therefore not free from doubt.

7. Turning to the point of corroboration, if the evidence is also examined in that regard, nothing cogent corroborating Sushilaben appears on record. According to Sushilaben, soon after the incident she went out of the office and shouted for help. Some of the labourers inclusive of Ashaben & Laxiben working nearby had rushed there hearing her shouts. It may be stated that workers, not the Govt. employees attend the labour work even on Saturdays. Some of them might be present in nearby area for their work. She then narrated her afflictive condition, agony & miseries betided her, because of sudden criminal force used to her by the respondent with the intention to outrage her modesty. Ashaben and Laxmiben have no axe to grind either against Sushilaben or accused, the respondent. They were not knowing either of the two before. They are independent witnesses. They

are examined at Ex. 19 & 20. Ashaben has in her deposition stated that she is not knowing Sushilaben the complainant and she is not even knowing about the happening of the incident on 28th May 1988. She has also made it clear, that the respondent is also not known to her. Likewise is the say of Laxmiben Amraji (Ex.20). According to her she and Ashaben were working in Telephone Exchange on 28th May 1988, the day of incident. She does not know what happened to Sushilaben. Sushilaben had not gone to her. She was knowing nothing, and also stated so before the police. These two witnesses, thus, do not support the case of the prosecution. No other corroboration is available on record.

8. At this stage, it may be stated, that according to Sushilaben after the incident she went home and informed her son Vinod. She in the company of Vinod then went to the police station and lodged the complaint. It is pertinent to note, that Vinod is not examined and no reason is assigned for his non-examination. It also comes out from her evidence and FIR she lodged, that immediately after going out of the office after bilking her from the bale that had betide her a Peon named Shri M.S. Masatti serving in the office of the Executive Engineer had gone there. She narrated her excruciation, the result of alleged barbaric attack from respondent. Shri M.S. Masatti is also not examined and no good reason is also assigned for his non-examination. These two persons were the best persons who could have thrown light on the proposition, especially when Ashaben and Laxmiben were not supporting, but the prosecution has abstained from examining them though they were available. When the prosecution has for no good reason dropped these two available witness, it is the strongest circumstance on record going to discredit the truth of the case of the prosecution. In other words, it can be said, that such circumstance on record casts clouds of suspicion on the credibility of the entire wrap and woof of the prosecution story.

9. For the aforesaid reasons, it is clear that the charge levelled against the respondent is not established beyond reasonable doubt. The learned Magistrate was, therefore, perfectly right in acquitting the respondent. The order of acquittal is, therefore, required to be maintained, and the appeal, being devoid of merits, is liable to be dismissed. In the result, the appeal is hereby dismissed.

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(rmr).